IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 13.12.2007

CORAM

THE HONOURABLE MR. JUSTICE S.J.MUKHOPADHAYA
AND
THE HONOURABLE MR. JUSTICE M.VENUGOPAL

W.A. NO. 1606 OF 2002

Kumbakonam Central Co-op.
Bank Employees Union
No.22, Ganni Lodge
Kamarajar Road, Kumbakonam
rep. by Thiru. S.Paramasivam .. Appellant

- Vs -

1. The Presiding Officer
   Labour Court, Cuddalore.

2. The Management of Kumbakonam
   Central Co-op. Bank Limited
   T.S.R. Big Street, Kumbakonam 612 001. .. Respondents

Writ Appeal filed against the order dated 7.2.2002 passed by learned single Judge in W.P. No.12399 of 1995 praying for issuance of writ of certiorarified mandamus to quash the order dt. 20.09.1994 made in I.D. No. 3/92 on the file of Labour court, Cuddalore (I.D. No.140/92 on the file of I Addl. Labour Court, Madras) as illegal, against law and direct the 2nd respondent to pay the wages as claimed in the claim petition to the petitioner for the suspense period

For Appellant : Mr. K.V.Ananthakrishnan

For Respondents : Ms.Narmada Sampath for R-2

JUDGMENT

S.J.MUKHOPADHAYA, J.

The appellant, Kumbakonam Central Co-operative Bank Employees Union, (hereinafter referred to as 'Union') has challenged the order dated 7th Feb., 2002, passed by learned single Judge in W.P. No.12399/95. By the said order, while affirming the decision of Labour Court, Cuddalore, the writ court held that by-law 13 (d) related to question of suspension during pendency of departmental proceeding and so far a the suspension of punishment is concerned, such punishment would be imposed in view of

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provision contained in by-law 13 (a), which did not limit the duration of suspension as a method of punishment.

2. The questions that arises for determination in this case are :-

a) Whether by-law 13 (d) deals only with suspension during the pendency of departmental proceeding or both, including suspension as a measure of punishment.

b) Whether suspension as a measure of punishment could be imposed for a limited period in view of by-law 13 (d).

3. The brief facts of the case is that, one, S.Paramasivam, a member of the union had joined the 2nd respondent, Kumbakonam Central Co-operative Bank Ltd., (hereinafter referred to as 'Bank') and was working as Secretary of Palakudi Village Agricultural Credit Society. He was placed under suspension on 5th July, 1977 pending departmental enquiry into certain allegations. A domestic enquiry was held and he having been found guilty, the 2nd respondent, by order dated 15th Oct., 1977, imposed punishment of suspension for a period of two years with effect from 5th July, 1977. Subsequently, he rejoined the duty on 7th July, 1979, after expiry of the period of two years and, in the meantime, the union challenged the matter before the industrial tribunal as a reference was made. The reference having answered against the workman, it was challenged by the appellant on the ground that the disciplinary authority had no jurisdiction to impose the punishment of suspension for a period beyond three months. It was contended that the management under by-law 13 (d) would inflict punishment of suspension only for a period not exceeding three months and as such the suspension for a period of more than three months was not sustainable.

4. Learned single Judge compared the provision contained in by-law 13 (a) and 13 (d) as was existing before they were amended and were in vogue at the time when punishment was imposed. The writ court was of the view that "..... however, by-law 13 (d), which related to question of suspension during pendency of departmental proceeding has not envisaged that suspension could not have exceeded more than three months at a time". So far as the suspensionas a measure of punishment is concerned, the Court was of the view that "(i) ..... in my view, such punishment could be imposed in view of the provisions contained in by-law 13 (a), which do not limit the duration of suspension as a method of punishment".

5. We have heard the parties, who have made similar submission as was made before the labour court and learned single Judge.

6. For proper appreciation of the case, it is desirable to notice the relevant by-law 13 (a) and 13 (d) as were in vogue at the time the proceeding was initiated and order of punishment was passed.

In 1977, by-law 13 (a), while empowered the competent authority to impose one or other punishment, suspension was shown as one of the punishment. Subsequently, in 1980, while by-law 13 (a) was amended, suspension was deleted from the arena of punishment.

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By-law 13 (d), as was in vogue in 1977, dealt with subsistence allowance as was payable during the period of suspension. It also limited

the maximum period of suspension at a time for punishment under by-law 13 (a). Subsequently, suspension having deleted from the arena of punishment, by-law 13 (d) was suitably amended in 1980, as evident from the provisions and quoted hereunder :-

By-law 13 (d) as in 1977	By-law 13 (d) as amended in 1980
The authority competent to suspend an employee may at its discretion sanction him a subsistence allowance at a rate not exceeding one fourth his substantive pay during the period of his suspension. No employee shall in any case be kept under suspension for period exceeding 3 months at a time for punishment under by-law No.13 (a)	i) The Chief Executive, viz., the Managing Director or the Secretary, Chief Executive Officer as the case may be shall have the powers to suspend to any member of the establishment pending enquiry of the charge of acts of misconduct or misappropriation or negligence of duty, etc. ii) The committee of the Bank shall have the power to place the Chief Executive Officer under suspension pending enquiry on the charge of acts of misconduct or misappropriation for negligence of duty, etc., provided that the Chief Executive is a member of the Establishment of the Bank. iii) The authority competent to suspend an employee may at its discretion, sanction him a subsistence allowance at a rate not exceeding one fourth of his substantive pay during the period of his suspension. No employee shall ordinarily be kept under suspension for a period exceeding 3 months from the date of suspension. The period of suspension may, however, be extended for reasons to be recorded in writing and that such extension shall not exceed 3 months at a time.

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7. Learned counsel for the appellant, while submitted that by-law 13 (d) prescribed limited suspension as a measure of punishment, according to the learned counsel for the respondents, the said by-law 13 (d) related to question of suspension during pendency of departmental proceedings only as held by learned single Judge. She also placed reliance on a Full Bench decision of this Court in The Secretary, Palani Co-operative Sales Society , Palani – Vs – Presiding Officer, reported in AIR 1975 Madras 241.

8. We have noticed the Full Bench decision as rendered in the case of Palani Co-operative Sales Society (supra) as also the impugned judgment passed by learned single Judge. We are of the view that the Full Bench decision of this Court in Palani Co-operative Sales Society (supra) is not applicable in the present case. The said case related to by-law 13 (h),

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which stipulated prescription of subsistence allowance while an employee is under suspension, relevant portion of which reads as follows :-

> "2. .....
> "The authority competent to suspend an employee, may, in its discretion, sanction him subsistence allowance at a rate not exceeding one-fourth of his substantive pay during the period of his suspension. No employee shall in any case be kept under suspension for a period exceeding three months at a time."

From the aforesaid provision it will be evident that by-law 13 (h) only prescribed the subsistence allowance as may be paid during the period of suspension of an employee and such suspension during the pendency of the proceeding was limited to a maximum period of three months. In view of aforesaid provision, Full Bench held that by-law 13 (b) of the said Co-operative Society gives an unlimited discretion to the competent authority to award such punishment, particularly to suspend an employee for any period as may be decided by it.

9. In the present case, it will be evident from by-law 13 (d) as was in vogue in 1977 that for the purpose of 'subsistence allowance' it covers both thesuspension, whether during the pendency of the departmental proceeding or as a measure of punishment; prescription was made as to what amount the competent authority may pay as subsistence allowance (substantive pay) during such period of suspension. So far as limitation is concerned, no general prescription was made with regard to suspension during pendency of departmental proceeding, but a limitation was prescribed for punishment under by-law 13 (a), as evident from sub-para of by-law 13 (d) and quoted hereunder :-

> "No employee shall, in any case, be kept under suspension for a period exceeding three months at a time for punishment under by-law 13 (a)."

10. We have already noticed that by-law 13 (a) merely empowers the punishing authority to inflict one or other punishment, including suspension where no limitation has been prescribed, but under by-law 13 (d), in sub-para as quoted above, a period of limitation of three months at a time was prescribed for punishment under by-law 13 (a). (Emphasis added).

Learned single Judge, while passing order, failed to notice that the sub-paragraph of by-law 13 (d) confine to 'suspension for punishment under by-law 13 (a)' and had nothing to do with suspension during the departmental proceeding and, thus, came to a wrong conclusion that by-law 13 (d) related to suspension during pendency of a departmental proceeding.

11. We, accordingly, hold that first part of by-law 13 (d), which empowers the competent authority to grant substantive allowance (substantive pay), is applicable in both types of suspension, i.e., suspension during the pendency of departmental proceeding and suspension as substantive punishment, but, so far as sub-para of by-law 13 (d) is concerned, it prescribes limitation of three months of suspension at a time is confined only to suspension as a measure of punishment and not applicable in case of suspension during pendency of a departmental

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proceeding.

12. For the reason aforesaid, we hold that the impugned order of punishment of suspension for a period of two years, to the extent it exceeds a period more than three months, i.e., one year and nine months, is bad and we set aside such part of the order of suspension. The impugned order of suspension shall be deemed to have been passed for a maximum period of three months. However, as the person on whom the punishment was inflicted, namely, S.Paramasivam, had already undergone the period of suspension of two years and had not actually worked beyond the period of three months, we are not inclined to grant any arrears of salary, though the period of one year and nine months, i.e., the period beyond three months suspension will be accounted for all other purposes, such as retirement benefits, etc. The order passed by learned single Judge dated 7th Feb., 2002, is set aside. The writ appeal is allowed with the aforesaid observations. But there shall be no order as to costs.

sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

GLN

To

The Presiding Officer
Labour Court
Cuddalore.

+ one cc to Mr. R. Parthiban, ADvocate, SR. 73844.

+ one cc to Mr. K.V. Anantha Krushan, Advocate, SR.73697.

KM(CO)
RP 19.12.2007.

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